

DEC 9 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

RICHARD FRANKLIN DUENAS,

Petitioner - Appellant,

v.

GEORGE GALAZA; BILL LOCKYER,
Attorney General,

Respondents - Appellees.

No. 00-57032

D.C. No. CV-99-02494-JNK

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Judith N. Keep, District Judge, Presiding

Submitted December 4, 2003**
Pasadena, California

Before: **KOZINSKI** and **NOONAN**, Circuit Judges, and **Schwarzer**, District
Judge.***

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

1. The district court did not err in denying Duenas's habeas petition. Under Ewing v. California, 123 S. Ct. 1179 (2003), and Lockyer v. Andrade, 123 S. Ct. 1166 (2003), Duenas's sentence is not cruel and unusual in violation of the Eighth Amendment.

2. Duenas's claim that the California trial court abused its discretion in refusing to reduce his crime to a misdemeanor does not raise a federal question, and thus is not properly before us. See Christian v. Rhode, 41 F.3d 461, 469 (9th Cir. 1994).

AFFIRMED.